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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>03 April 2008</u>.

2a) ☐ This action is **FINAL**.　　2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-54</u> is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-54</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a) ☐ All　b) ☐ Some * c) ☐ None of:

　　　　1. ☐ Certified copies of the priority documents have been received.

　　　　2. ☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
　　　　　　application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)　Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)　Paper No(s)/Mail Date. _____

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-54 are pending.

Response to Appeal Brief

2.   In view of the Appeal Brief filed on 04/03/2008, PROSECUTION IS HEREBY

REOPENED. The Office Action with the new ground(s) of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the

following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply

under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied

by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130,

1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

DETAILED ACTION

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.   Claims 1-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. US 2004/0031029 A1(hereinafter Lee).

Claim 1:

Lee discloses a method for providing autonomic, event-driven upgrade maintenance of one or more software modules residing on a computer system (see for example, Abstract), the method comprising:

detecting a predefined triggering event on the computer system indicative of a potential maintenance issue, the predefined triggering event being triggered by a current operating condition of the computer system (for example, FIG. 3, item 308, page 4, [0037], "…notification messages…may be employed to automatically trigger....");

connecting to an upgrade management server (see for example FIG. 2, item 106, "Server", and related text);

creating on the upgrade management server a list of recommended upgrade modules to download to the computer system, the list based upon a set of selection policies (see for example page 2, [0022], "...update file...", also [0024-0025], Fig. 3, item 306, "database", and related text, e.g., [0035-0038]);

downloading the list of recommended upgrade modules from the upgrade management server to the computer system (see for example FIG. 7B, step 728, "obtain updated files", and related text); and

selectively installing upgrade modules chosen from the list of recommended upgrade

modules on the computer system (see for example FIG. 7B, step 730, "execute update

file at networked device").

Claim 2:

Lee further discloses the method of claim 1, wherein the method further comprises the

step of: notifying a user of the status of the upgrade maintenance operation (see for

example FIG. 7B, steps 722, "monitor status", and step 724, "send notification", and

related text).

Claim 3:

Lee further discloses the method of claim 1, wherein the predefined triggering event

comprises a change to the hardware configuration of the computer system (see for

example page 4, [0037]).

Claim 4:

Lee further discloses the method of claim 1, wherein the predefined triggering event

comprises a

change to the software configuration of the computer system (see for example page 4,

[0037]).

Claim 5:

Lee further discloses the method of claim 1, wherein the predefined triggering event

comprises exceeding a predefined error threshold on the computer system (see for

example page 5, [0045]) .

Claim 6:

Lee further discloses the method of claim 1, wherein the predefined triggering event comprises exceeding a predefined performance threshold on the computer system (see for example page 4, [0037]).

Claim 7:

Lee further discloses the method of claim 1, wherein the predefined triggering event comprises exceeding a predefined elapsed time since the last connection to the upgrade management server (See for example FIG. 4, item 312, "Schedule", and related text).

Claim 8:

Lee further discloses the method of claim 1, wherein the steps of connecting to a upgrade management server and selectively installing the list of recommended upgrade modules are controlled by a set of user defined policies (see for example FIG. 4, item 310, "parameters db", which help control the "update processing module", item 404, and related text).

Claim 9:

Lee further discloses the method of claim 8, wherein the set of user defined policies includes a preferred connection time (See for example page 2, [0022], "…update scheduler…").

Claim 10:

Lee further discloses the method of claim 8, wherein the set of user defined policies includes the connection resource to be used (see for example page 2, [0023]).

Claim 11:

Lee further discloses the method of claim 8, wherein the set of user defined policies

includes the specification of computer system areas/software products to enable

automatic application of upgrades (see for example page 2, [0020]).

Claim 12:

Lee further discloses the method of claim 8, wherein the set of user defined policies

includes a defined time to connect to the upgrade management server to check for

upgrades (see for example page 2, [0022], "…update scheduler…").

Claim 13:

Lee further discloses the method of claim 8, wherein the set of user defined policies

includes a defined elapsed time interval for connecting to the upgrade management

server to check for upgrades (see for example page 2, [0022]).

Claim 14:

Lee further discloses the method of claim 8, wherein the set of user defined policies

includes a notification list for e-mailing user of information and actions relative to the

upgrade management process (see for example FIG. 4, item 308, "notification module",

and related text).

Claim 15:

Lee further discloses the method of claim 8, wherein the set of user defined policies

include a list of one or more upgrade management servers to be used for the upgrade

management process (see for example FIG. 3, items 330, 332, 334, and related text).

Claim 16:

Lee further discloses the method of claim 1, wherein the one or more computor software

modules comprises software applications (see for example page 2, [0020],

"...automatically updating software components...").

Claim 17:

Lee further discloses the method of claim 1, wherein, the one or more computer

software modules comprises operating systems (see for example page 2, [0020],

"...automatically updating software components...").

Claim 18:

Lee further discloses the method of claim 1, wherein the one or more computer software

modules comprises device drivers for installed hardware components (see for example

page 2, [0020], "...automatically updating software components disposed at the various

networked devices...").

Claim 19:

Lee further discloses the method of claim 1, wherein the set of selection policies is sent

from the computer system to the upgrade management server (see for example FIG. 3,

items 302, "admin console", and item 330, "server", and related text).

Claim 20:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes creating the list of recommended upgrade modules based upon a specific set

of upgrades requested by the computer system (see for example FIG. 4, item 404,

"update processing module", and related text, also FIG. 7B, step 720, "send update

parameters to local update agent", and related text).

Claim 21:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes comparing a revision level of the one or more software modules residing on the

computer system against a revision level of one or more software modules residing on

the upgrade management server (see for example FIG. 7B, step 722, "monitor status",

and related text).

Claim 22:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes creating the list of recommended upgrade modules by identifying modules

associated with a hardware change on the computer system (see for example page 1,

[0001]).

Claim 23:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes creating the list of recommended upgrade modules by identifying software

modules associated with a software change on the computer system (see for example

page 2, [0020]).

Claim 24:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes creating the list of recommended upgrade modules by identifying upgrades

specifically associated with an error triggering event on the computer system (for

example page 4, [0037], "...notification messages...may be employed to automatically

trigger....").

Claim 25:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes creating the list of recommended upgrade modules by identifying upgrades

specifically associated with a performance triggering event on the computer system (for

example page 4, [0037], "…notification messages…may be employed to automatically

trigger....").

Claim 26:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes creating the list of recommended upgrade modules by analyzing a problem

history provided by the computer system (see for example page 6, [0054]).

Claim 27:

Lee further discloses the method of claim 19, wherein the set of selection policies

includes creating the list of recommended upgrade modules by identifying compatible

revision levels between two or more software modules included within the list of

modules (see for example page 6, [0054]).

Claim 28:

Lee further discloses the method of claim I, wherein the step of downloading the list of

recommended upgrade modules from the upgrade management server to the computer

system further comprises the step of downloading the upgrade modules themselves

from the upgrade management server to the computer system (see for example FIG. 6,

and related text).

Claim 29:

Lee further discloses the method of claim 1, wherein the step of selectively installing upgrade modules chosen from the list of recommended upgrade modules on the computer system further comprises the step of downloading any upgrade modules chosen from the list of recommended upgrade modules from the upgrade management server to the computer system prior to the install (see for example FIG. 6, and related text).

Claims 30-53:

Claims 30-53 are computer-readable program versions of the claimed method steps discussed above in Claims 1-27 respectively, wherein all claim limitations have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Lee.

Claim 54:

Lee discloses a method for deploying computing infrastructure (see Abstract), comprising integrating computer-readable code into a computing system, wherein the code in combination with the computing system is capable of providing autonomic, event-driven upgrade maintenance of one or more software modules residing on a computer system (see for example page 2, [0020]), the method comprising the steps of: detecting a predefined triggering event on the computer system indicative of a potential maintenance issue (see for example page 4, [0037], "...notification messages...may be employed to automatically trigger...."); connecting to an upgrade management server (see for example FIG. 3, item 330, Server, and related text); creating on the upgrade management server a list of recommended upgrade modules to download to the

computer system, the list based upon a set of selection policies (see for example FIG.

7A, step 706, "process update parameters", and related text); downloading the list of

recommended upgrade modules from the upgrade management server to the computer

system (see for example FIG. 7B, step 730, "execute update file at networked device",

and related text); and selectively installing any upgrade modules chosen from the list of

recommended upgrade modules on the computer system (see for example FIG. 7B,

step 730, "execute update file at networked device", and related text).

Conclusion

5.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Andrew Y. Chou whose telephone number is (571) 272-

6829. The examiner can normally be reached on Monday-Friday, 8:00 am - 4:30 pm. If

attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tuan Q. Dam, can be reached on (571) 272-3695.

The fax phone number for the organization where this application or proceeding is

assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or proceeding

should be directed to the TC 2100 Group receptionist whose telephone number is (571)

272 2100.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair- direct.uspto.,qov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll free).

/Andrew Chou/

Examiner, Art Unit 2192

/Tuan Q. Dam/

Supervisory Patent Examiner, Art Unit 2192